

FACTUAL HISTORY

On November 5, 2012 appellant, then a 43-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained whiplash from a blow to the head in the performance of duties on October 29, 2012. He stated that his injury occurred as a result of being hit in the head by a “red man” with a padded hand-held pad. Appellant did not submit any other factual or medical evidence in support of his claim.

On November 23, 2012 OWCP requested additional factual and medical evidence from appellant on the grounds that he had not submitted any factual or medical evidence apart from his Form CA-1. It afforded him 30 days to submit additional evidence. OWCP also requested that appellant’s employer respond to its inquiries regarding appellant’s duties and whether the incident occurred in the performance of duty, noting that, in the absence of a full reply, OWCP may accept the claimant’s allegations as factual.² Neither appellant nor his employer submitted documentation in response to OWCP’s requests.

By decision dated December 26, 2012, OWCP denied appellant’s claim. It accepted that appellant was a federal civilian employee who filed a timely claim and that the incident occurred as described, but found that appellant had not submitted the necessary medical evidence to establish fact of injury.

The record contains medical evidence that was after the December 26, 2012 decision. The Board is unable to review new evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury⁴ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at

² See C.F.R. § 10.117(b).

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ *T.H.*, 59 ECAB 388, 393 (2008); see *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

OWCP has accepted that the incident of December 26, 2012 occurred at the time, place and in the manner alleged, and that appellant was a civilian employee who filed a timely claim. The issue is whether appellant has provided medical evidence sufficient to support his claim. The Board finds that appellant did not meet his burden of proof to establish that he has an injury related to the October 29, 2012 incident.

In support of his claim, appellant sent only a Form CA-1 for traumatic injury. Neither he nor his employer responded to OWCP's requests for additional medical and factual evidence and response to inquiries.

As appellant did not submit any medical evidence in support of his claim that he sustained an injury related to the October 29, 2012 employment incident, he has not met his burden of proof to establish the medical component of fact of injury.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁰ Appellant may submit this or any new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁷ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁸ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *James Mack*, 43 ECAB 321, 329 (1991).

¹⁰ 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant did not establish that he sustained a whiplash injury on October 29, 2012 in the performance of duty because he did not meet his burden of proof to establish the medical component of fact of injury.

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board